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THIRD CONFERENCE
ON THE LAW OF THE SEA

Third Session
FIRST COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE NINETEENTH MEETING

held at the Palais des Nations, Geneva, on
Wednesday, 26 March 1975, at 11 a.m.

<u>Chairman:</u>	Mr. ENGO	United Republic of Cameroon
<u>Rapporteur:</u>	Mr. MOTT	Australia
later:	Mr. BAILEY	Australia

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TRIBUTE TO THE MEMORY OF KING FAISAL OF SAUDI ARABIA

The CHAIRMAN announced that a special plenary meeting of the Conference would be held on Thursday, 27 March, to pay tribute to King Faisal of Saudi Arabia, who had died tragically.

At the invitation of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of King Faisal of Saudi Arabia.

OFFICERS OF THE COMMITTEE

The CHAIRMAN said that at the current session there would be no further statement of principle or of national positions. The time had come to negotiate a convention within the framework of the Declaration of Principles adopted by the General Assembly. There were major political -- and possibly, for some, revolutionary -- decisions to be taken. Participants should endeavour to negotiate on the basis of the proposals before the Committee -- and negotiation did not mean reiterating conflicting views -- views that were in any event well known. Those who disagreed about a given issue should meet privately to discuss it. Every agreement would be welcome, from whatever source it emerged.

He therefore suggested that the formal work of the Committee and the number of its informal meetings should be curtailed and the work of small negotiating groups intensified.

He regretted that Mr. Mott's government duties at home compelled him to give up his office as Rapporteur of the Committee, in which he had served with great ability, competence, understanding and dedication.

Mr. MOTT (Australia), Rapporteur, confirmed that he was obliged to give up his functions as Rapporteur, which would be taken over by Mr. Bailey, if the Committee approved the recommendation to that effect made by the Group of Western European and other countries.

He stressed that the members of the First Committee were in a collective position of great responsibility in that they had been entrusted with developing a system of law to regulate the activities of States and peoples in an area covering over half the surface of the globe. They should take account not only of the immediate interests of governments and their peoples but also of the interests of generations yet unborn; the importance of the latter factor could not be over-estimated. The problems to be settled were known; they were difficult and at times seemed intractable, and progress was slow. But the main objective was to draw up a workable and acceptable convention and, in the case of the First Committee, a set of rules covering the exploration and

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exploitation of the sea-bed beyond the limits of national jurisdiction which would reflect the primary interests of all mankind and could in addition be adapted to necessary and inevitable subsequent changes. In order to achieve that end, it would be necessary to exercise goodwill, patience and tolerance and to be prepared to accept a compromise when a solution was in sight. It was a question not of surrendering but of reconciling the various interests represented within the Committee.

The CHAIRMAN said that, if he heard no objection, he would take it that the Committee decided to accept the recommendation of the Group of Western European and other countries that Mr. Bailey (Australia) should replace Mr. Mott (Australia) in the office of Rapporteur.

It was so decided.

INTERNATIONAL REGIME FOR THE SEA-BED AND OCEAN FLOOR BEYOND NATIONAL JURISDICTION
(continued)

Mr. IGREVSKY (Union of Soviet Socialist Republics) introduced the working document on the basic provisions of the rules and conditions governing the evaluation and exploitation of the mineral resources of the sea-bed beyond the limits of the continental shelf - provisions which should form an integral part of the Law of the Sea Convention (A/CONF.62/C.1/L.12); the document was a preliminary list, and not an exhaustive one, of basic rules for the exploitation and exploration of the sea-bed.

His delegation had repeatedly stated that it was essential to include such rules in the text of the Convention itself or in an annex to it. Consideration of the rules for the exploration and exploitation of the sea-bed and of the establishment of an international sea-bed organization should form an integral part of the Conference's work. The rules should take account of the rights and interests of all States, in accordance with the concept of the common heritage of mankind. The text submitted therefore provided that all States Parties would have the right to conclude contracts for evaluation and exploitation with the organization to be set up and to secure the same number of contracts. The number of contracts to be awarded to a State Party should be restricted in order to prevent the development of monopolies. Such a system would mean that sectors of the sea-bed could be reserved for States which did not yet possess the necessary technical equipment to conduct evaluation and exploitation operations. The procedure for awarding contracts allowed for a balance to be maintained within the number of contracts awarded to a State between sectors where the prospects of finding certain useful minerals were very favourable and those where they

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were less so. Sectors would be reserved in all areas having Category I resources. If more than one application for contracts related to the same category of resources within a single sector, the Council would give preference among competing applications to those from developing countries. As a result of rapid technological progress, some of those countries were already drawing a substantial proportion of their national resources from exploitation of the mineral resources of the continental shelf; and they should soon be in a position to exercise their rights beyond the limits of the shelf. It was therefore essential that they should be enabled to acquire the necessary experience and technical staff: he drew the Committee's attention to article 21 of the document submitted by his delegation, which dealt with participation by experts from developing countries in evaluation and exploitation activities undertaken by a State Party or a group of States Parties.

Every type of prospecting activity involved the expenditure of speculative capital which was amortized only when a deposit was discovered and then exploited. Since prospecting at great depth was very expensive, those who carried it out should be guaranteed participation in exploitation also, for which reason his delegation's document provided for a single evaluation and exploitation contract. Prospecting, whether carried out by States or natural or juridical persons, should not of itself confer any right to secure evaluation and exploitation contracts; otherwise the developing countries would be placed at a disadvantage in relation to countries that had already prospected beyond the continental shelf. Under the proposed system of contracts the interests of all States were protected, because a State engaged in exploitation operations had to pay fees to the international organization, which would redistribute them with particular reference to the developing countries' needs. The Soviet proposal also provided for evaluation and exploitation activities to be carried out by the international organization itself, thus ensuring the participation of all States Parties in exploiting marine resources. Article 5 of the proposal provided that, prior to the allocation of sectors to States, the international organization might reserve certain sectors for evaluation and exploitation by itself, delegating the operations, if required, to natural or juridical persons under subcontracts. The organization would supervise the operations throughout under arrangements that it would be at liberty to establish. Article 5 did not stipulate what the ratio between the area of the sectors

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reserved for the international organization and the sectors open for evaluation and exploitation by States Parties should be. That would have to be the subject of negotiations.

Lastly, he stressed the preliminary nature of the draft articles, and said that his delegation reserved the right to amplify, clarify or amend them.

Mr. PINTO (Sri Lanka), Chairman of the Working Group, said that the Group had been set up at Caracas to pursue negotiations on articles 1 to 21 (A/CONF.62/C.1/L.3), which dealt with the status, scope and basic provision of the régime to be established on the basis of the Declaration of Principles. The Group had been required to give special consideration to article 9 entitled: "Who may exploit the area".

In Caracas, where six meetings had been held, the Group had started consideration of article 9 immediately and, in particular, variant (B), which was a significant contribution from the Group of 77. By the end of the Caracas session the Working Group's negotiations, in particular on paragraph 2 of article 9, had reached the point at which there were prospects for a compromise.

With regard to conditions for exploration and exploitation, the Committee had had before it in Caracas four documents (A/CONF.62/C.1/L.6 - L.9), to which the working document submitted by the Soviet Union (A/CONF.62/C.1/L.12) should be added.

On resuming its work in Geneva a few days earlier, the Working Group had decided to start with a detailed consideration of the issues raised by the various proposals regarding the conditions for exploration and exploitation. After a preliminary review of the 36 types of provision set forth in the comparative table which was before it, the Working Group had for the time being set aside what appeared to be items of a subsidiary nature which were of a purely technical character and did not mask any question of principle. They had then singled out and classified in groups items of fundamental importance for negotiations, on the understanding that the classification should remain flexible and that cross-references to other items would be permissible.

Among the fundamental items selected for immediate detailed discussion, the Working Group had chosen the following issues, which he would cite by their short titles as given in the comparative table:

(1) Issues relating to the scope of the Authority's power (stages of operations, legal arrangements relating to activities, Authority's power to open areas, production control);

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- (2) Issues concerning the method of entering into arrangements with the Authority and basic principles of those arrangements (selection of entities, participation in subsequent stages of operation, financial arrangements);
- (3) Issues relating to the settlement of disputes (security of tenure, enforcement, force majeure, suspension or termination of arrangements entered into, settlement of disputes).

He stressed that the classification was a summary one and that the members of the Working Group could add other relevant items, if necessary. He did not consider it advisable as yet to give a detailed account of the Group's work, given the very nature of that work and the stage it had reached. He would confine himself to mentioning a few points which seemed to him to be of special interest. The Working Group had decided that, for the time being, its aim was to lay down certain basic conditions, certain fundamental norms to be set out in the Convention, that would offer guidance to the future Authority and its organs in the performance of their functions. The basic conditions would thus enable the Authority's powers to be clarified and circumscribed. Some were urging that those conditions should be set out in sufficient technical detail or be accompanied by provisional rules that conformed strictly to the basic conditions themselves, so that exploitation of the mineral resources of the sea-bed could start as soon as the future convention came into force. That point of view had not been opposed, although some members of the Group had pointed out that purely technical matters should not be dealt with within the basic conditions but should be handled later by the competent organ of the future Authority.

In a series of five meetings held since the beginning of the Geneva session, the Working Group had dealt with the second group of issues he had mentioned and was beginning to deal with the first group. It was at the moment engaged in evolving an "operational model of a contractual relationship" between the Authority, on the one hand, and companies or state enterprises having the necessary technology, on the other. The development of such a model was not to be interpreted as indicating that previous positions on the system of exploitation had been abandoned. It was simply an attempt at rapprochement, at finding common ground, while contentions on issues of principle, if they existed, were temporarily suspended.

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The Working Group hoped to finish the first phase of its work by 4 April. It had found it necessary to set up a small group to assist with drafting, which would help it to achieve definite results fairly quickly.

Mr. de SOTO (Peru), Chairman of the Group of 77 reported that all members of the Group were apprehensive about the recently published news that one State participating in the Conference was taking unilateral legislative action with a view to exploring and exploiting sea-bed resources beyond the limits of its national jurisdiction. The Bill in question was even to contain a time-limit: in the event of the Convention on the Law of the Sea not being opened for ratification by 29 February 1976, the State in question could as from that date grant contracts for the exploration and exploitation of the sea-bed beyond the limits of the continental shelf to private companies.

The Group of 77 wished to point out that according to the Declaration of Principles contained in General Assembly resolution 2749 (XXV), adopted without objection, the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction and the resources of that area were the common heritage of mankind. An international régime applying to the area and its resources was to be established by an international treaty of a universal character. General Assembly resolution 2749 (XXV) remained valid for the Group of 77 and, in the absence of the international treaty which was in the course of preparation, all States and all natural or juridical persons were required to refrain from exploiting the area which was the common heritage of mankind. In fact, that resolution established a moratorium, and all activities undertaken outside the international régime to be established were unlawful. Under paragraph 14 of the resolution each State had the responsibility of ensuring that activities in the area, including those relating to its resources, were carried out in conformity with the international régime to be established.

All members of the Group of 77 had clearly demonstrated at Caracas and, since then, at Geneva that they wanted to negotiate a convention in good faith taking account, in particular, of the interests of developed countries which possessed the technology for exploring and exploiting the sea-bed. The proposals put forward by the Group of 77, particularly those concerning draft article 9 of the convention amply testified to that good faith. However, it was imperative that all States should participate in the negotiations in the same spirit and that none should exert direct or indirect pressure on others, for example, in the form of a time-limit. States taking unilateral action amounting to putting pressure on others would seriously jeopardize the Conference and would have to take responsibility for doing so.

Mr. WILLESSEE (Australia) stated that Australia was rich in minerals and accordingly had a particular interest in the work of the First Committee. In

principle, it supported the idea of setting up an Authority with the requisite powers to regulate all activities undertaken in the international area of the sea-bed. It was as yet impossible to determine what the sea-bed had to offer to the international community and action should be taken at once to ensure that the sea-bed was explored and exploited methodically and rationally and for the benefit of all mankind.

His Government considered that the institution to be established should represent all groups of interests and that the Authority's machinery should give it the widest latitude to decide what types of arrangement it would use. For that reason his Government was willing to support a "dualist" formula under which the Authority could explore and exploit the area itself, if it had the necessary financial and technical means, but could also conclude various types of contract with States or juridical persons undertaking exploration and exploitation on its behalf.

A few weeks previously his Government had received a notification from a United States company, Deepsea Ventures Inc., to the effect that it was claiming the exclusive right to exploit a sector of 60,000 square miles of sea-bed in the Pacific for 30 years. Subsequently the area of the sector exploited would be reduced to 30,000 square miles for an indefinite period. The Company was clearly intending to establish for its own benefit a kind of priority right vis-à-vis the future international Authority and anyone who might wish to exploit that sector before the international Authority's rights were duly recognized. The company had sent a similar notification to a number of other States. The document in question was reproduced in the January 1975 issue of the review "International Legal Materials", published by the American Society of International Law. In its reply, his Government had stated that the company's claim was unacceptable. The principle of the freedom of the high seas did not permit companies of any nationality to claim exclusive rights over the resources of the high seas, its sea-bed or subsoil. Use was permitted; appropriation was not.

In recognition of the importance of the minerals of the deep sea-bed his Government would do its utmost to further the adoption of a solution acceptable to a large majority of the participants in the Conference.

Mr. CAMEJO (Cuba) said that, as a member of the Group of 77, he entirely endorsed the comments made by the Peruvian representative on behalf of the Group. However, in his opinion, for the purposes of the Committee's work the State mentioned by the Peruvian representative should be named.

Mr. STEVENSON (United States of America) informed the representative of Peru, spokesman for the Group of 77, that the United States Government had not in any way changed its policy concerning the best way of exploiting the mineral resources of

the sea-bed. In its opinion, an international régime would best meet the needs of all participants in the Conference. His delegation had come to Geneva with the firm intention of taking part in the negotiations to establish that régime and believed that the work done by the First Committee and the Working Group and during informal negotiations was extremely encouraging, because of the seriousness with which it was being undertaken.

The Bill mentioned by the Peruvian representative had come from an official United States body; it had not been approved by the United States Government or even submitted to Congress. Furthermore, it was common knowledge that his Government had urged Congress to be extremely cautious over Bills relating to the sea-bed and to make applicable as quickly as possible any provisions that might be decided on at the international level. Immediately after the end of the third session of the Conference members of the Government would report to Congress and would draw up national legislative measures for adoption.

The Peruvian representative had referred to the Declaration of Principles adopted by the General Assembly in resolution 2749 (XXV). The United States delegation had voted in favour of that Declaration and continued to subscribe to it, but its interpretation of that resolution was slightly different from that of the Peruvian representative, as the statements made by the United States representative when the Declaration was adopted showed. Nonetheless, the United States was firmly resolved to contribute as much as possible towards solving, on the international plane, one of the most intractable problems which the international community had ever had to settle.

The meeting rose at 12.30 p.m.